IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRD DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 19484 of 1997

Between:

Srinivasa Fertilisers, rep.by its Managing Partner, Kallepally Lingamurthy Raju,
S/o. Satti Raju, R/o. Ravulapalem ,
E.G.District., A.P.

..... PETITIONER

AND

1. The Mandal Revenue Officer,
Ravulapalem Mandal, E.G.Dist,
A.P.
2 A.P.State Agro Industries Development Corporation, regd. Office at

Hyderabad and regional ,
office at Gandhinagar, Kakinada,
East Godavari District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order, or direction more particularly one in the nature of writ of mandamus declaring the proceedings of the 1st respondent bearing Ref.C.242/97 dt.17.7.1997 for recovery of decretal amount of Rs.1,26,183-88 Ps. in O.S.No.153/87 on the file

by 1st Additional Judge, Kakinada, East Godavari, is without jurisdiction, arbitrary and illegal.

Counsel for the Petitioner:MR.P.RAJAM RAJU

Counsel for the Respondent No.1 : GP FOR REVENUE

Counsel for the Respondent No.2 : Mrs.P.Bala Rani

The Court made the following :

ORDER:

A.P. State Agro Industries Development Corporation Limited, 2nd respondent, in the present Writ Petition, in short referred to as "Corporation" moved W.V.M.P.No.3625/2004 in W.P.M.P.No.23677/1997 praying for vacation of the interim direction dated 19-8-1997 and at the time of hearing of the vacate application, with the consent of the Counsel on record, the Writ Petition itself is being finally disposed of.

Sri P.Rajam Raju, Counsel representing the writ petitioner after taking this Court through the averments made in the affidavit filed in support of the Writ Petition maintained that in view of the fact that a decree had been obtained in O.S.No.153/87 on the file of I Additional Judge, Kakinada, East Godavari for recovery of amount, the same can be put into execution by the 2nd respondent-Corporation and hence the impugned proceeding of the Mandal Revenue Officer, Ravulapalem Mandal, East Godavari District, 1st respondent herein, in Reference

C.No.242/97, dated 17-7-1997, cannot be sustained. The learned Counsel also pointed out several of the factual aspects. The learned Counsel also submitted that the condition imposed while granting interim order had been complied with.

The learned Government Pleader for Revenue had submitted that in view of the fact that the amount due to the Corporation can be recovered not only by putting the decree into execution but also by invoking Section 52-A of the A.P. Revenue Recovery Act, 1864, hereinafter in short referred to as “R.R.Act” by the Corporation by virtue of G.O.Ms.No.891, Revenue (N) Department, dated 24-6-1982, the impugned action cannot be found fault in any way. The learned Government Pleader also maintained that recovery proceeding cannot be held to be without jurisdiction merely because yet another mode by way of putting the decree into execution is available.

Mrs.P.Bala Rani, the learned Standing Counsel representing the 2nd respondent-Corporation made elaborate submissions in relation to different provisions of the R.R.Act and also would contend that the Constitutional validity of Section 52-A of the said Act had been challenged and the same was upheld by a Full Bench of this Court in C.J. RAJU Vs. THE STATE OF ANDHRA PRADESH, REP. BY THE DISTRICT COLLECTOR, WEST GODAVARI AND OTHERS . The learned Counsel also pointed out that in view of the fact that by virtue of the G.O. referred to supra, the 2nd respondent is entitled to recover

the amounts due by invoking the provisions of the R.R.Act, the mere fact that there is yet another remedy of putting the decree into execution would not in any way come in the way of the Corporation in resorting to the recovery by invoking the provisions of the R.R.Act. The learned Counsel also had taken this Court through the contents of the counter affidavit initially filed and also the contents of the affidavit filed in support of W.V.M.P.No.3625/2004 in this regard.

Heard the Counsel on record.

The Writ Petition is filed for a writ of mandamus declaring the proceedings of the 1st respondent bearing No.Ref.C.242/97 dated 17-7-1997 for recovery of decretal amount of Rs.1,26,183-88 ps. in O.S.No.153/87 on the file of I Additional Judge, Kakinada, East Godavari District as without jurisdiction, arbitrary and illegal and to pass such other suitable orders. The writ petitioner is the Managing Partner of M/s.Srinivasa Fertilizers, Ravulapalem Mandal, East Godavari District. The petitioner opened a katha (account) with the 2nd respondent for the purchase of fertilizers and pesticides on credit basis and the petitioner used to purchase fertilizers and pesticides from time to time from the 2nd respondent on credit basis and also used to pay the amounts to the 2nd respondent from time to time. It was also averred that the 2nd respondent had shown Rs.47,725-81 ps. due in petitioner's account maintained by the 2nd respondent as

on 31-7-1984. In fact the 2nd respondent had not shown in the account of the petitioner's payments made by way of demand drafts. It is respectfully submitted that the petitioner sent to the 2nd respondent two demand drafts bearing Nos.270 and 271 on 29-1-1983 for Rs.92,100/- and Rs.31,860/- issued by the Andhra Bank, Ravulapalem, East Godavari District out of which the 2nd respondent omitted to show the amount of Rs.31,860/- in the petitioner's account and if this amount is deducted from the balance there will not be much amount due by the petitioner. It was further averred that the 2nd respondent is not entitled to claim interest at the rate of 18% per month as claimed by him. It was also averred that the 2nd respondent filed a suit O.S.No.153/87 on the file of I Additional Judge, Kakinada, East Godavari for recovery of Rs.60,388-99 ps. and had obtained a decree on 14-12-1995. It is stated that an Appeal had been preferred which is at S.R. stage. It is further stated that surprisingly the petitioner received the impugned notice from the 1st respondent for recovery of Rs.1,26,183-88 stating that the 1st respondent will attach the properties of the petitioner unless the petitioner pays the amount on or before 25-7-1997. The said action is questioned in the present Writ Petition.

In the counter affidavit filed several details had been narrated. Several of the factual details tracing the history of the litigation also

had been specifically averred in paras 2, 3 and 4 of the counter affidavit. It was further specifically averred that as per the provisions of G.O.Ms.No.891, Revenue (N) Department dated 24-6-1982 all loans, advances and other sums and amounts due to the Corporation in respect of sale of fertilizers and pesticides together with interest may be recovered in the same manner as arrears of land revenue by invoking Section 52-A of the R.R. Act.

Several of the facts are not in controversy. The Full Bench of this Court in the decision referred (1) supra held that Section 52-A of the R.R. Act is Constitutionally valid on the ground that the Legislation falls under Entry 11-A of List III and Entry 30 of List II of the Constitution of India. It is also not in serious dispute that by virtue of G.O.Ms.No.891 dated 24-6-1982, Section 52-A of the R.R. Act can be invoked for recovery of amounts and advances and other sums and amounts due to the Corporation in respect of sale of fertilizers and pesticides etc. When that being so, the stand taken by the writ petitioner that inasmuch as recovery can be resorted to by putting the decree into execution and hence this mode of recovery cannot be adopted by the Corporation and hence the impugned action of the 1st respondent is without jurisdiction, definitely cannot be sustained. In GRANDHI KAMARAJ AND ANOTHER Vs. GOVERNMENT OF ANDHRA PRADESH a Division Bench of this Court while dealing with Section 32-G of the State Financial Corporations Act, 1951 had

arrived at a conclusion that the State Financial Corporation is entitled to recover the amount advanced by it as if it were arrears of land revenue under the provisions of R.R. Act. For the foregoing reasons, on the ground that there is a remedy of recovery of the amount by putting the decree obtained by the Corporation into execution, it cannot be said that the impugned proceeding is without jurisdiction.

The Writ Petition is devoid of merit and accordingly the same shall stand dismissed, with costs.

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P.S. Narayana.,J

Date : -2-2005

L.R. copy to be marked : YES : NO

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH, AT HYDERABAD

W.P.No.19484 of 1997

MEMORANDUM OF COSTS

Stamp for Vakalatnama Rs. 5-00

Advocate's Fee (F.C. is not filed by the Counsel) Rs. 0-00

Translation and Printing charges Rs. 0-00

To be paid by the petitioner to the respondent Rs. 5-00

ASSISTANT REGISTRAR

To:

One fair copy to Hon'ble Sri Justice P.S. Narayana (for his Lordship's kind perusal).

1. Mandal Revenue Officer,
   Ravulapalem Mandal, E.G.Dist,
   A.P.
2. A.P.State Agro Industries Development Corporation, regd. Office at

   Hyderabad and Regional ,
   office at Gandhinagar, Kakinada,
   East Godavari District.

3. 2 C.Cs. to Government Pleader for Revenue

High Court of Andhra Pradesh,

High Court Buildings,

Hyderabad (OUT).

4. 2 C.Cs. to Standing Counsel for

A.P. State Agro Industries Development Corporation,

Regd. Office at Hyderabad & Regional Office at

Gandhinagar, Kakinada, East Godavari District.

5. 2 C.D. copies

6. 8 L.R. copies

7. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.
8. The Secretary, A.P. Advocates Association Library, High court Buildings, Hyderabad.